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March 28, 2022

By ECF

Hon. Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

MEMO ENDORSED

The Application is granted.

SO ORDERED:

Paul G. Gardephe
Paul G. Gardephe, U.S.D.J.

Re: United States v. Amaury Modesto
17 Cr 251 (PGG)

Dated:

March 28, 2022

Dear Judge Gardephe:

I write with the consent of the Government and Probation requesting that the Court grant this application to terminate Mr. Modesto's post-release supervision.

PRELIMINARY STATEMENT

Mr. Modesto was arrested in 2017, pleaded guilty in 2018, was sentenced in 2019, and an amended judgment was filed on August 12, 2019¹, sentencing him to a period of incarceration of 60 months to be followed by 4 years of post-release supervision. On July 24, 2020, defendant filed a motion for compassionate release (Dkt. 303), which was granted on August 13, 2020 (Dkt. 311). Mr. Modesto was released from custody and immediately began his period of supervised release.

The Court's compassionate release order mandated that Mr. Modesto served the first six months of his period of supervised release on home confinement. The Court modified the

¹ A Judgment was filed on July 23, 2019 (Dkt. 248), but due to a clerical error, an amended judgment was filed on August 12, 2019 (Dkt. 251)

conditions of Mr. Modesto's supervised release on September 7, 2020 (Dkt. 313), placing Mr. Modesto on home detention so that he could work. Between November 2020 and March 2021, the Court granted four applications to amend the terms and conditions of Mr. Modesto's supervised release, each time expanding his rights to be outside of his home, to travel, and to work for extended hours.

Now, having been fully compliant with all the terms and conditions of release, Mr. Modesto seeks early termination of supervised release – to which his probation officer and the Government consent – based on his spotless compliance and the lack of a need for continued supervision.

As a reminder, at the time of his original sentencing, Mr. Modesto faced a sentencing guideline range of 51-63 months and a mandatory minimum sentence of 60 months. Probation recommended the mandatory minimum sentence. The Government recommended a guideline sentence and the Court sentenced Mr. Modesto to the mandatory minimum sentence as required by law.

At sentencing, Your Honor said:

I have very little discretion here given the mandatory minimum sentence of 60 months. I will say that if I had discretion, I would likely impose a sentence of less than 60 months given that the defendant last committed a crime 20 odd years ago, has been married for 17 years, has raised five children and has been steadily employed. As it is, I'm required to impose a mandatory minimum of 60 months and that is what I intend to do.

See Dkt. 226, Transcript of sentencing at pp. 12-13.

Mr. Modesto, is two weeks shy of 42 years old. He is a non-violent offender, who was a model inmate while he was incarcerated. With his wife, File, with whom he has been together for over 20 years, they have five children. Their children are ages 19, 16, 12, 9 and 5. In advance of sentencing, his wife told Probation, as reported in the PSR, that he is a "great

husband and father," that he is "very helpful in the home and extremely active in the children's lives. He is very involved with their schooling and extracurricular activities."

After his arrest and release on Pre-Trial Supervision, Mr. Modesto secured employment working full-time in the shipping/receiving department at King Zak industries in Goshen, N.Y. He was employed there in September 2017 until incarceration. After his release from prison, Mr. Modesto secured a job at AutoZone. In December 2020, he secured a second job at Home Depot. Thereafter, he was promoted to a manager position at AutoZone. At the end of February 2021, Mr. Modesto started his own business doing auto detailing work. He has been successfully, self-employed since then.

Mr. Modesto would like to relocate to Florida, where his cousin has an auto body shop, a used car business and an auto parts store. He has offered Mr. Modesto a position in his company as well as offering to have Mr. Modesto do auto detailing work on vehicles.

Given Mr. Modesto's continued success and progress, Probation does not believe supervision is necessary.

In an email to counsel dated March 16, 2022, Probation Officer Christina Alexander wrote:

At this time, I believe an early termination is best. Please see below for Probation's recommendation.

Adjustment to supervision:

On August 13, 2020, Mr. Modesto commenced his term of supervised release and has been in full compliance with the conditions. On March 3, 2021, Mr. Modesto was transferred to the Southern District of New York's Low Intensity Caseload due to his compliance and positive adjustment to supervision. To date, he has completed seventeen (17) months of his forty-eight (48) months' term of supervised release.

In addition to the mandatory and standard conditions, the court ordered Mr. Modesto to pay a \$100 special assessment fee, which he satisfied on March 9, 2020. Further, he was required to participate in substance abuse treatment and serve six (6) months on home confinement. Mr. Modesto attended treatment at Restorative Management Center and

submitted to several random drug tests, all of which returned negative for illicit drugs. Mr. Modesto also satisfied his term of home confinement.

RECOMMENDATION

Based on his overall compliance, it is the respectful recommendation of the Probation Department that Mr. Modesto be granted an early termination from supervised release.

We have conferred with AUSA Jilan Kamal, the Assistant United States Attorney, who has prosecuted this case since its inception, and AUSA Kamal consents to Mr. Modesto's application herein.

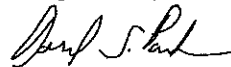
CONCLUSION

For the foregoing reasons, we respectfully request that the Court grant Mr. Modesto's request for early termination of his period of supervise release.

We thank the Court for its consideration in this matter.

Dated: New York, New York
March 28, 2022

Respectfully submitted,



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